

discharging effluent, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and nonnavigable houseboats as defined in §1304.101. Any person considering constructing, operating, or maintaining any such obstruction on a stream in the Tennessee River Watershed should carefully review the regulations in this part and the 26a Applicant's Package before doing so. The regulations also apply to certain activities on TVA-owned land alongside TVA reservoirs and to land subject to TVA flowage easements. TVA uses and permits use of the lands and land rights in its custody alongside and subjacent to TVA reservoirs and exercises its land rights to carry out the purposes and policies of the Act. In addition, the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, and the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. 1251 *et seq.*, have declared it to be congressional policy that agencies should administer their statutory authorities so as to restore, preserve, and enhance the quality of the environment and should cooperate in the control of pollution. It is the intent of the regulations in this part 1304 to carry out the purposes of the Act and other statutes relating to these purposes, and this part shall be interpreted and applied to that end.

#### § 1304.2 Application.

(a) If the facility is to be built on TVA land, the applicant must, in addition to the other requirements of this part, own the fee interest in or have an adequate leasehold or easement interest of sufficient tenure to cover the normal useful life of the proposed facility in land immediately adjoining the TVA land. If the facility is to be built on private land, the applicant must own the fee interest in the land or have an adequate leasehold or easement interest in the property where the facility will be located. TVA recognizes, however, that in some cases private property has been subdivided in a way that left an intervening strip of land between the upland boundary of a TVA flowage easement and the waters of the reservoir, or did not convey to the adjoining landowner the land underlying

the waters of the reservoir. In some of these situations, the owner of the intervening strip or underlying land cannot be identified or does not object to construction of water-use facilities by the adjacent landowner. In these situations, TVA may exercise its discretion to permit the facility, provided there is no objection from the fee owner of the intervening strip or underlying land. A TVA permit conveys no property interest. The applicant is responsible for locating the proposed facility on qualifying land and ensuring that there is no objection from any owner of such land. TVA may require the applicant to provide appropriate verification of ownership and lack of objection, but TVA is not responsible for resolving ownership questions. In case of a dispute, TVA may require private parties requesting TVA action to grant or revoke a TVA permit to obtain a court order declaring respective land rights. TVA may exercise its discretion to permit a facility on TVA land that is located up or downstream from the land which makes the applicant eligible for consideration to receive a permit.

(b) Applications shall be addressed to the Tennessee Valley Authority, at one of the following Watershed Team locations:

(1) P.O. Box 1589, Norris, TN 37828, (865) 632-1539, Reservoir: Norris;

(2) Suite 300, 804 Highway 321, North, Lenoir City, TN 37771-6440, (865) 988-2420, Reservoirs: Ft. Loudoun, Tellico, Fontana;

(3) 221 Old Ranger Road, Murphy, NC 28906, (704) 837-7395, Reservoirs: Hiwassee, Chatuge, Appalachia, Blue Ridge, Nottely, Ocoee;

(4) 2611 W. Andrew Johnson Hwy., Morristown, TN 37814-3295, (865) 632-3791, Reservoirs: Cherokee, Douglas;

(5) P.O. Box 1010, Muscle Shoals, AL 35662-1010, (256) 386-2560, Reservoirs: Tim's Ford, Normandy, Wheeler, Wilson;

(6) 202 West Blythe Street, P.O. Box 280, Paris, TN 38242, (901) 642-2026, Reservoirs: Kentucky, Beech River;

(7) P.O. Box 1010, Muscle Shoals, AL 35662-1010, (256) 386-2228, Reservoirs: Pickwick, Bear Creek;

(8) Suite 218, Heritage Federal Bank Building, 4105 Fort Henry Drive, Kingsport, TN 37662, (423) 239-2000, Reservoirs: Boone, Watauga, Wilbur, Fort Patrick Henry, South Holston;

(9) 1101 Market Street, Chattanooga, TN 37402, (423) 697-6006, Reservoirs: Chickamauga, Nickajack;

(10) 2009 Grubb Road, Lenoir City, TN 37771-6440, (865) 988-2440, Reservoirs: Watts Bar, Melton Hill;

(11) 2325 Henry Street, Guntersville, AL 35976-1868, (256) 571-4280, Reservoirs: Guntersville.

(c) *Submittal of section 26a application.* Applicants must submit certain required information depending upon whether a proposed facility is a minor or major facility. Examples of the two categories are provided in paragraphs (c)(1) and (2) of this section. Most residential related facilities are minor facilities. Commercial or community facilities generally are major facilities. TVA shall determine whether a proposed facility is minor or major. An application shall not be complete until payment of the appropriate fee as determined in accordance with 18 CFR part 1310, and disclosed to the applicant in the materials provided with the application package or by such other means of disclosure as TVA shall from time to time adopt. For purposes of the information required to be submitted under this section and the determination of fees, a request for a variance to the size limitations for a residential-related facility (other than a waiver request under §1304.212 or §1304.300(a)) shall be regarded as an application for a major facility. In addition to the information required in paragraphs (c)(1) and (2) of this section, TVA may require the applicant to provide such other information as TVA deems necessary for adequate review of a particular application.

(1) *Information required for review of minor facility.* By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, and gazebos. One copy of the application shall be prepared and submitted in accordance with the instructions included in the section 26a Applicant's Package. The application shall include:

(i) *Completed application form.* One (1) copy of the application shall be prepared and submitted. Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) *Project, plan, or drawing.* The project plan/drawing shall:

(A) Be prepared on paper suitable for reproduction (8½ by 11 inches);

(B) Identify the kind of structure, purpose/intended use;

(C) Show principal dimensions, size, and location in relation to shoreline;

(D) Show the elevation of the structure above the full summer pool; and

(E) Indicate the river or reservoir name, river mile, locator landmarks, and direction of water flow if known.

(iii) *A site photograph.* The photograph shall be at least 3 by 5 inches in size and show the location of the proposed structure or alteration and the adjacent shoreline area.

(iv) *Location map.* The location map shall clearly show the location of the proposed facility and the extent of any site disturbance for the proposed project. An 8½ by 11-inch copy of one of the following is ideal: a TVA land map, a subdivision map, or a portion of a United States Geological Survey topographic map. The subdivision name and lot number and the map number or name shall be included, if available.

(v) *Environmental consultations and permits.* To the fullest extent possible the applicant shall obtain or apply for other required environmental permits and approvals before or at the same time as applying for section 26a approvals. Consultations under the National Historic Preservation Act of 1966 and the Endangered Species Act of 1973 shall take place, and permits from the U. S. Army Corps of Engineers and State agencies for water or air regulation shall be obtained or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(2) *Information required for a major facility.* One (1) copy of the application

shall be prepared and submitted according to instructions included in the section 26a Applicant's Package. By way of example only, major projects and facilities may include: marinas, community docks, barge terminals, utility crossings, bridges, culverts, roads, wastewater discharges, water intakes, dredging, and placement of fill. The application shall include:

(i) *Completed application form.* Application forms are available from TVA at the locations identified at the beginning of this section. The application shall include a narrative project description which indicates what is to be built, removed, or modified, and the sequence of the work.

(ii) *Project plan or drawing.* Adequate project plans or drawings shall accompany the application. They shall:

(A) Be prepared on paper suitable for reproduction (no larger than 11 by 17 inches) or contained on a 3½-inch floppy disc in "dxf" format.

(B) Contain the date; applicant name; stream; river or reservoir name; river mile; locator landmarks; and direction of water flow, if known;

(C) Identify the kind of structure, purpose/intended use;

(D) Include a plan and profile view of the structure;

(E) Show principal dimensions, size, and location in relation to shoreline;

(F) Show the elevations of the structure above full summer pool if located on a TVA reservoir or above the normal high water elevation if on a free-flowing stream or river; and

(G) Show the north arrow.

(iii) *Location map.* The location map must clearly indicate the exact location and extent of site disturbance for the proposed project. An 8½- by 11-inch copy of the appropriate portion of a United States Geological Survey topographic map is recommended. The map number or name shall be included. In addition, recent photos of the location are helpful for TVA's review and may be included.

(iv) *Other information where applicable.* The location of any material laydown or assembly areas, staging areas, equipment storage areas, new access roads, and road/access closure required by the project or needed for construction; the location of borrow or

spoil areas on or off TVA land; the extent of soil and vegetative disturbance; and information on any special reservoir operations needed for the project, such as drawdown or water discharge restrictions.

(v) *Site plans.* Some projects, particularly larger ones, may require a separate site plan which details existing and proposed changes to surface topography and elevations (cut and fill, clearing, etc.), location of all proposed facilities, and erosion control plans.

(vi) *Environmental consultations and permits.* To the fullest extent possible the applicant shall obtain or apply for other required environmental permits and approvals before or at the same time as applying for section 26a approvals. Consultations under the National Historic Preservation Act of 1966 and the Endangered Species Act of 1973 shall take place, and permits from the U.S. Army Corps of Engineers and State agencies for water or air regulation shall be obtained or applied for at the same time as or before application for section 26a approval. The applicant shall provide TVA with copies of any such permits or approvals that are issued.

(d) *Discharges into navigable waters of the United States.* If construction, maintenance, or operation of the proposed structure or any part thereof, or the conduct of the activity in connection with which approval is sought, may result in any discharge into navigable waters of the United States, applicant shall also submit with the application, in addition to the material required by paragraph (c) of this section, a certification from the State in which such discharge would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge would originate, or from the Environmental Protection Agency, that such State or interstate agency or the Environmental Protection Agency has determined that there is reasonable assurance that the applicant's proposed activity will be conducted in a manner which will not violate applicable water quality standards. The applicant shall further submit such supplemental and additional

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information as TVA may deem necessary for the review of the application, including, without limitation, information concerning the amounts, chemical makeup, temperature differentials, type and quantity of suspended solids, and proposed treatment plans for any proposed discharges.

EFFECTIVE DATE NOTE: At 68 FR 46936, Aug. 7, 2003, §1304.2 was revised. Paragraphs (b), (c), and (d) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

#### § 1304.3 Delegation of authority.

The power to approve or disapprove applications under this part is delegated to the Vice President, Resource Stewardship, or the designee thereof, subject to appeal to the Board as provided in §1304.6. In his/her discretion, the Vice President may submit any application and supporting materials to the Board for its approval or disapproval. Administration of the handling of applications is delegated to Resource Stewardship.

#### § 1304.4 Application review and approval process.

(a) TVA shall notify the U.S. Army Corps of Engineers (USACE) and other Federal agencies with jurisdiction of the application as appropriate.

(b) If a hearing is held for any of the reasons described in paragraph (c) of this section, any interested person may become a party of record by following the directions contained in the hearing notice.

(c) Hearings concerning approval of applications are conducted (in accordance with § 1304.5) when:

(1) TVA deems a hearing is necessary or appropriate in determining any issue presented by the application;

(2) A hearing is required under any applicable law or regulation;

(3) A hearing is requested by the USACE pursuant to the TVA/Corps joint processing Memorandum of Understanding; or

(4) The TVA Investigator directs that a hearing be held.

(d) Upon completion of the review of the application, including any hearing or hearings, the Vice President shall

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issue a decision approving or disapproving the application. The basis for the decision shall be set forth in the decision.

(e) Promptly following the issuance of the decision, the Vice President or the Board, as the case may be, shall furnish a written copy thereof to the applicant and to any parties of record. The Vice President's decision shall become final unless an appeal is made pursuant to §1304.6. Any decision by the Board on a matter referred by the Vice President shall be a final decision.

#### § 1304.5 Conduct of hearings.

(a) If a hearing is to be held for any of the reasons described in §1304.4(c), TVA shall give notice of the hearing to interested persons. Such notice may be given by publication in the FEDERAL REGISTER, publication in a daily newspaper of general circulation in the area of the proposed structure, personal written notice, posting on TVA's Internet website, or by any other method reasonably calculated to come to the attention of interested persons. The notice shall indicate the place, date, and time of hearing (to the extent feasible), the particular issues to which the hearing will pertain, and the manner of becoming a party of record, and shall provide other pertinent information as appropriate. The applicant shall automatically be a party of record.

(b) Hearings may be conducted by the Vice President and/or such other person or persons as may be designated by the Vice President or the Board for that purpose. Hearings are public and are conducted in an informal manner. Parties of record may be represented by counsel or other persons of their choosing. Technical rules of evidence are not observed although reasonable bounds are maintained as to relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. Cross-examination by parties of witnesses or others providing statements or testifying at a hearing shall not be allowed. After the hearing has been completed, additional evidence will not be received unless it presents new and material matter that in the judgment of the person or persons conducting the hearing could not be presented at the